THE HON'BLE SRI JUSTICE B.PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.No. 26654 OF 2005

Date: 09.08.2006

Between:

The District Educational Officer, Kurnool and three others.

... Petitioners.

And

Shahnaz Begum, Gr.II Urdu Munshi, Govt. Boys High School, Atmakur, Kurnool District.

... Respondent.

THE HON'BLE SRI JUSTICE B.PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.No. 26654 OF 2005

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

This writ petition is filed, by the District Educational Officer, Kurnool and others, aggrieved by the order of the A.P. Administrative Tribunal, in O.A. No. 1420 of 2005 dated 08.07.2005, whereby the petitioners herein were directed to consider the case of the respondent-applicant for promotion to the post of Urdu Pandit Gr-I subject to her seniority, eligibility and in accordance with the Rules, as expeditiously as possible, not later than two months.

Facts, in brief, are that the respondent herein was appointed as an Urdu Munshi Gr.II and was posted at G.H.S.(G) Kurnool. She joined duty on 11.11.1976 and worked in the said institution ever since her initial appointment. She was promoted and posted as Gr-I Urdu Munshi, to the Boys High School, during the year 1977. As she was not willing to work in the Boys High School, the respondent-applicant relinquished her promotion to the post of Urdu Munshi Gr-I, and as a result her junior was promoted and to that effect necessary entries were made in her service register. The respondent-applicant was informed, vide proceedings dated 22.10.1977, that her claim for promotion as Urdu Pandit Gr-I stood overlooked in view of her relinquishment and her juniors were therefore being promoted. In June 2004 a vacancy, in the post of

Urdu Munshi Gr-I having arisen at the Girls High School (Urdu) Kurnool, where the respondent had been working for the past 27 years, she approached the A.P. Administrative Tribunal, filing O.A. No. 3843 of 2004, seeking a direction that she be promoted to the post of Gr-I Urdu Munshi and that she be posted at the Govt. Girls High School (Urdu) Kurnool itself. The Tribunal, by order dated 08.07.2005, held that the O.A. was squarely covered by the judgment in O.A. No. 916 of 2001 dated 01.11.2001 wherein the Tribunal had held thus:-

> "……..Following the above judgment of the High Court, we hold that when once promotion was declined by the government servants on health grounds or other grounds, that does not disentitle them for promotion permanently and they are entitled for promotion when fresh promotions arise subsequently. Therefore, the impugned rejection order dated 08.09.2000 is set aside and the Respondents are directed to consider the case of the applicant herein for promotion to the post of Grade-I Hindu Pandit in the ensuing counseling. The O.A. is accordingly disposed of at the admission stage……."

The Tribunal took note of the fact that despite time being granted to the petitioners herein to file their counter, no counter-affidavit was filed, but that the Government Pleader had, however, disputed that the O.A. was covered by the orders issued in O.A. No. 916 of 2001. The Tribunal examined the records and held that it was clear that the applicant had not relinquished her promotion to the post of Urdu Pandit Gr-I on the ground that the applicant was not willing to work in the Boys High School. The Tribunal, following its earlier judgment, observed that merely because promotion was declined by a Government servant, on any ground, that did not disentitle him to claim promotion permanently and that he was entitled for promotion when a fresh vacancy arose subsequently. The Tribunal held that in this case also, merely

because the applicant declined promotion earlier that could not be a ground to deny her promotion permanently and that the O.A. was squarely covered by the earlier judgment of the Tribunal in O.A. No. 916 of 2001. The O.A, as filed by the respondent herein, was allowed.

Before us, the learned Government Pleader for Services-I would fairly submit that the case of the respondent-applicant was covered by Rule 28 of the A.P. State and Subordinate Service Rules and not Rule 11(b) thereof. Learned Govt. Pleader would submit that once a Government servant relinquished her right for promotion, such relinquishment was final and irrevocable and she was disentitled from claiming promotion for the remaining period of her service.

Sri P. Amarender, learned Counsel for the respondent – applicant, on the other hand, would submit that Rule 28 of the A.P. state and subordinate rules, as distinct from Rule 11(b) thereof, did not disentitle a government servant from being considered for promotion permanently merely because she had relinquished her right to claim promotion earlier. Learned Counsel would submit that, on her relinquishment, the Government servant would lose her right to be appointed to the post to which she was promoted and, on her junior being appointed to the said post, she would consequently become junior to that person. Learned Counsel would contend that the relinquishment was not a permanent bar and that the government servant concerned was entitled to be considered for promotion in future vacancies. Learned Counsel would commend to this Court the judgment of the Tribunal in O.A.No. 715 of 2004 dated 23.03.2004.

Rule 28 of the A.P. State and Subordinate Service Rules

reads as under:

"**28. Relinquishment of rights by members:-** Any member of a service may, in writing, relinquish any right or privilege to which he may be entitled to, under these rules or the special rules, if in the opinion of the appointing authority such relinquishment is not opposed to public interest. Such relinquishment once made will be final and irrevocable. Nothing contained in these rules or the special rules shall be deemed to require the recognition of any right or privilege to the extent to which it has been so relinquished:

Provided that no conditional relinquishment or relinquishment of right for a temporary period shall be permitted.

The Tribunal, in its earlier order in **Smt. S. Swarna Kumari Vs. Dy. Commissioner of Prohibition and Excise**[1], considered the scope and implication of Rule 28 of the A.P. State & Subordinate Services Rules and held thus:

"…….A careful perusal of Rule-28, extracted above, would reveal the following:

(1) An option is given to any member of a service to relinquish any right or privilege to which he may be entitled to, under the relevant rules (this includes right or privilege of promotion).

(2) Such relinquishment is subject to acceptance of the appointing authority. Who must be satisfied before acting upon such relinquishment that such relinquishment was not opposed to public interest.

(3) Such relinquishment once made will be final and irrevocable.

(4) Once such relinquishment has come into force, the authorities concerned shall not be required to recognise any right or privilege to the extent to which it has been so relinquished.

The proviso to this Rule contemplates that conditional relinquishment or relinquishment of a right for a temporary period shall not be permitted…….

……..**Viewed in this context, a relinquishment of a right or privilege to promotion would only mean that his right to be considered for promotion, while he was occupying a particular place in the seniority list, at a time when he was eligible for promotion by virtue of passing of the tests etc., as required under the then existing rules and in respect of a vacancy, that has arisen at the relevant time has been relinquished. This relinquishment may be permanent.**

It is true that conditional relinquishment is not permissible. What is means is that in respect of that particular opportunity for promotion a member of a service cannot relinquish with a rider that he would claim that privilege of promotion on that happening of certain contingency. For example, if a member of a service has relinquished his right or privilege of promotion on the ground of his sickness, he cannot be allowed to claim that offers of promotion may be revived after he is cured of his sickness.

Similarly, the provision that he cannot be permitted to relinquish

temporarily would mean that in respect of a particular opportunity for promotion, the employee cannot be allowed to claim that the offer of promotion may be kept open for him for a particular period.

The real question is what privilege or right has been relinquished ?

This assumes significance in view of the language used in Rule-28 of the state and Subordinate Service Rules which is to the following effect:

> "Nothing contained in these rules or the special Rules shall be deemed to require the recognition of any right or privilege to the extent to which it has been so relinquished."

This would indicate that the authorities concerned are not required to recognise any right or privilege of a member of a service to the extent to which it as been so relinquished. The words "to the extent to which it has been so relinquished" appears significant.

So, the question, therefore, is where a member of a service, who had a privilege or a right to be considered for promotion, at a particular stage, has relinquished his right, the relinquishment has to be interpreted in the background of what has been stated above that a privilege or right of promotion depends on concatenation of several circumstances. **The extent of relinquishment has to be determined in the context of that particular occasion when the right or privilege for promotion had arisen for a member of a service. The relinquishment of an opportunity for promotion, which arose for an employee occupying certain place in seniority list in the year 2001, in view of a vacancy that arose then, in view of the fact that she was eligible for promotion in the light of the criteria laid down in the Rules, would mean that the extent the privilege has been relinquished is confined to the privilege related to that particular vacancy which was available to her by virtue of the abovementioned circumstances. The Rule cannot be interpreted to mean that the relinquishment was in respect of future vacancies also.**

The learned Government Pleader seeks to contend that such an interpretation would render the provision in the Rule that such relinquishment will be permanent nugatory. We are unable to accept this contention.

As far as that particular vacancy is concerned, the employee's relinquishment is final. He cannot claim later that he may be deemed to have been promoted to that particular vacancy and that his seniority may be fixed as if he was promoted to that vacancy. Accepting such interpretation would mean that if a member of service, who has relinquished his promotion, at one stage, is promoted subsequently when another vacancy arose, he will be junior to a person, who inspite of being junior to this member, was promoted to the vacancy relinquished by him in the promotion post.

In the light of the above discussion, we have no hesitation in holding that relinquishment of right or privilege of promotion to a particular vacancy would amount to permanent relinquishment of right of privilege fro promotion to that particular vacancy. The Rule-28 of the State and Subordinate Service Rules cannot be read or interpreted to mean that his right to be considered for promotion to any vacancy arising in future also is permanently extinguished. Such an interpretation would lead to frustration and unrest in the service

defeating the object of promoting efficiency and harmonious functioning……" (emphasis supplied)

We are in complete agreement with and record our approval of the interpretation placed by the Tribunal, in O.A.No. 715 of 2004 dated 23.03.2004, on Rule 28 of the A.P. State and Subordinate Service Rules.

In this context, it also necessary to take note of Rule 11(b) of the A.P. State and Subordinate Rules which prescribes the time for a person appointed to a post, otherwise than by direct recruitment, to join the said post. Rule 11(b) reads as under:

"**(b) Time to join a post on appointment otherwise than by direct recruitment:-** A person appointed to a post, otherwise than by direct recruitment, shall be allowed joining time of 15(fifteen) days from the date of receipt of the order of appointment sent to the candidate by Registered Post with acknowledgement due or by any other means. If a person fails to join the post within the stipulated period of 15(fifteen) days or evades to join the post by proceeding on leave, the offer of appointment shall be treated as automatically cancelled and the name of the candidate shall be deemed to have been omitted from the list of the approved candidates and she/he shall forfeit his right of appointment both for the present and in future for the post."

Rule 11(b), as amended by G.O.Ms. No. 123 dated 14.03.2001 with effect from 19.12.2000, specifically provides that if a person fails to join the post within the stipulated period of fifteen days or evades to join the post, the offer of appointment shall be treated as automatically cancelled, the name of the candidate shall be deemed to have been omitted from the list of approved candidates and that she/he shall forfeit his right of appointment both for the present and in future for the post. Rule 11(b), as it then was, provided that failure to join the promoted post within the stipulated time would result in forfeiture of the person's right for appointment both for the present and in the future. Unlike Rule 11(b), as inserted by G.O.Ms. No. 123 dated

14.03.2001, Rule 28, which was in existence even prior thereto, does not specifically provide for forfeiture of future consideration for promotion. Relinquishment of promotion in 1977 will only disentitle the respondent-applicant from claiming promotion to the post which was filled up by way of promotion in the year 1977 and it is not open for her thereafter to seek withdrawal of her relinquishment or to contend that despite her relinquishment, she should have been considered for promotion to the said post. Rule 28 does not prohibit consideration of the respondent-applicant's case for promotion forever, for a right to be considered for promotion, if an employee is otherwise eligible, is a fundamental right under Article 16(1) of the Constitution of India. (**Ajit Singh II Vs. State of Punjab**[2] and **Delhi Jal Board Vs. Mahinder Singh**[3]). It is also well settled that fundamental rights cannot be waived (**Olga Tellis Vs. Bombay Municipal Corporation**[4]). While the respondent-applicant did not specifically waive her right to be considered for promotion, no such waiver can be said to have been made by necessary implication either. Rule 28 does not disentitle a member of a service from being considered for promotion in a future vacancy merely because he/she had relinquished his/her right under the Rules for promotion earlier. While the submission of the learned Government Pleader that the Tribunal had not examined the scope and purport of Rule 28 may indeed be true, on a reading of Rule 28, we do not find any reason to take a view different from the one taken by the Tribunal. The jurisdiction of this Court under Article 226 of the Constitution of India is supervisory and not appellate. We are satisfied that the conclusion of the Tribunal and the relief granted by it is not

contrary to law. We see no reason, therefore, to exercise our discretionary jurisdiction under Article 226 of the Constitution of India to interfere with the order of the Tribunal.

The writ petition fails and is accordingly dismissed. However, in the circumstances, without costs.

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B.PRAKASH RAO, J

Date: -08-2006

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RAMESH RANGANATHAN, J

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[1] Judgment in O.A.No. 715 of 2004 dated 23.03.2004

[2] 1999(7) SCC 209

[3] 2000(7) SCC 210

[4] AIR 1986 SC 180